

Amendment and Response

Serial No.: 09/822,651

Confirmation No.: 9447

Filed: 30 March 2001

For: WEB HAVING DISCRETE STEM REGIONS

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Remarks

The Office Action mailed 13 April 2006 has been received and reviewed. Claims 71 and 83 have been amended and claims 80 and 91 have been canceled. As a result, claims 71-79, 81-90, 92-108 remain pending after entry of the amendments. Reconsideration and withdrawal of the rejections are respectfully requested.

The 35 U.S.C. §112, First Paragraph Written Description Rejection

Claims 74, 90, and 98 were under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically, it was alleged in the Office Action that the limitation "one or more stems of the plurality of stems extend from an *interior* of the discrete polymeric region" was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time of the application was filed.

When asserting a "written description" rejection under 35 U.S.C. § 112, first paragraph, the Office Action must present "a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims." MPEP § 2163.04, pp. 2100-186 to 187, 8th Ed., Rev. 3, August 2005 (*citing In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976)). Applicants respectfully submit that this burden has not been met.

In the interest of advancing prosecution, Applicants do, however, note that the features recited in the identified phrases of claims 74, 90 and 98 find support in the application as filed at, e.g., p. 4, lines 16-20 and Figures 1, 3, 4, & 8.

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For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the written description rejection of claims 74, 90, and 98 under 35 U.S.C. § 112, first paragraph.

The 35 U.S.C. §112, Second Paragraph Rejection

Claims 74, 90, and 98 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

It was alleged in the Office Action that in claims 74, 90, and 98, "the phrase 'one or more stems of the plurality of stems extend from an interior of the discrete polymeric region' renders the claim indefinite because it is not clear how otherwise stems could extend from the discrete polymeric region to which they are fused. For examining purposes the phrase was interpreted as 'one or more stems of the plurality of stems extend from the discrete polymeric region'." Office Action, p. 3 (April 13, 2006) (emphasis in original).

The language objected to in this rejection is presented to indicate that the stems of each polymeric region extend from an interior of the polymeric region. It is asserted that "it is not clear how otherwise stems could extend from the discrete polymeric region." Applicant submits that the interior of any polymeric region is that area located inside of the perimeter of the polymeric region. As a result, the stems that extend from the interior of the polymeric region could, for example, extend from the center or the central portion of the polymeric region as depicted in, e.g., Figures 1, 3, and 4.

The standard to apply when assessing claims for compliance with 35 U.S.C. § 112, second paragraph is set forth in the MPEP as follows: "In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to

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others as to what constitutes infringement of the patent." MPEP § 2173.02, p. 2100-213, 8th Ed., Rev. 3, August 2005.

Applicants respectfully submit that the reasoning provided in the Office Action to support this rejection does not establish why one of ordinary skill in the art would not understand the scope of claims 74, 90, and 98.

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 74, 90, and 98 under 35 U.S.C. § 112, second paragraph.

The 35 U.S.C. §102 Rejections**Thomas (U.S. Patent No. 5,586,371)**

Claims 71-79, 83-84, 86, and 88-90 were rejected under 35 U.S.C. §102(b) as being anticipated by Thomas (U.S. Patent No. 5,586,371). This rejection is respectfully traversed.

Although Applicants do not agree with this rejection and the assertions made in support thereof (and reserve the right to traverse in the future), independent claims 71 and 83 have been amended to recite that "each stem of the plurality of stems comprises a free, unattached end" as recited in dependent claims 80 and 91 (now canceled). Neither claim 80 or 91 was subject to this anticipation rejection.

As a result, Applicants respectfully submit that this rejection is moot. Reconsideration and withdrawal of the anticipation rejection of claims 71-79, 83-84, 86, and 88-90 are, therefore, respectfully requested.

Wessels et al. (U.S. Patent No. 5,669,120)

Claims 71-84, 86-106, and 108 were rejected under 35 U.S.C. §102(b) as being anticipated by Wessels et al. (U.S. Patent No. 5,669,120). This rejection is respectfully traversed.

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Each of independent claims 71, 83, and 94 recites, *inter alia*, "a plurality of discrete polymeric regions fused to the first major side of the substrate . . . wherein the plurality of discrete polymeric regions are located only on the first major side of the substrate."

In contrast, Wessels et al. discloses a molded surface fastener wherein a synthetic resin (that forms hook elements) *encapsulates* a substrate (*see, e.g.*, Wessels et al., Figures 4A-4F) such that the resin is present on both major sides of the substrate. In fact, Wessels et al. makes clear that the woven or knit cloth to be used "must have adequate pores for the passage of molten resin." (col. 3, lines 36-37). Thus, when manufactured, the molten resin passes through the pores of the woven or knit cloth "to embed the foundation structure of the pile woven or knit cloth in the molten resin." (col. 4, lines 14-20, emphasis added).

Because the polymeric resin is present on both sides of the embedded substrate, Wessels et al. cannot anticipate independent claims 71, 83, and 94 – or any of dependent claims 72-84, 86-93, 95-106, and 108 subject to this rejection.

It is also asserted in the Office Action that Wessels et al. teaches "... a plurality of hook elements 4b fused to one (first) side of the resin 4a ...", Office Action, p. 6 (April 13, 2006) (emphasis in original). Applicants note, however, that the resin is present on both sides of the substrate S. As a result, the articles of Wessels et al. do not include "discrete polymeric regions are located only on the first major side of the substrate" as recited in independent claims 71, 83, and 94.

It is also asserted in the Office Action that "the web construction of a structure shown in Fig. 4A is elastic because a pile core sheet S is of a coarse woven or knit cloth with great flexibility (See column 6, lines 32-39)." Office Action, p. 7 (April 13, 2006) (emphasis in original). Applicants traverse the assertion that flexible articles are inherently elastic. For example, a steel cable, though flexible, is not considered elastic. Furthermore, the cited section of Wessels et al. does not describe the pile core sheet S as exhibiting elasticity.

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With respect to claims 94-106 and 108, it is asserted that Wessels et al. teaches "the plurality of discreet polymeric regions (**patches**) located only on the first major side of the substrate." Office Action, p. 7 (April 13, 2006) (emphasis in original). Applicants disagree.

As discussed above, Wessels et al. discloses a molded surface fastener wherein a synthetic resin (that forms hook elements) *encapsulates* a substrate (*see, e.g.*, Wessels et al., Figures 4A-4F) such that the resin is present on both major sides of the articles. In fact, Wessels et al. makes clear that the woven or knit cloth to be used "must have adequate pores for the passage of molten resin." (col. 3, lines 36-37). Thus, when manufactured, the molten resin passes through the pores of the woven or knit cloth "to embed the foundation structure of the pile woven or knit cloth in the molten resin." (col. 4, lines 14-20, emphasis added).

In fact, the polymeric resin used to form the structures 4b on the upper side of the substrate S is delivered through the pores or openings in the substrate S either through injection molding as described in connection with Figure 1 or extrusion molding as described in connection with Figure 5 of Wessels et al. The injection molding process in which polymeric resin is forced through the substrate S is described in Wessels et al. at, e.g., col. 7, lines 10-41. The extrusion molding process in which the polymeric resin is forced through the substrate S is described in Wessels et al. at, e.g., col. 8, line 55 to col. 9, line 4. In both processes, the substrate S is embedded in the polymeric resin which, as a result, is present on both major surfaces of the substrate S. As a result, the assertion that Wessels et al. teaches "the plurality of discreet polymeric regions (**patches**) located only on the first major side of the substrate" cannot be supported by the reference itself.

For at least the reasons presented above, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection of claims 71-84, 86-106, and 108 in view of Wessels et al.

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The 35 U.S.C. §103 Rejection

Claims 85 and 107 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wessels et al. (U.S. Patent No. 5,669,120) in view of Murasaki (U.S. Patent No. 5,643,651). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143.

Applicants submit that a *prima facie* case of obviousness of claims 85 and 107 over Wessels et al. in view of Murasaki has not been established. As stated above in regard to the anticipation rejection of independent claims 83 and 94 (from which claims 85 and 107 depend), Wessels et al. does not teach every element of claims 83 and 94 (e.g., discrete polymeric regions located on only the first major side of the substrate).

Murasaki does not remedy the deficiencies of Wessels et al. Rather, Murasaki also teaches articles in which a substrate 12 is embedded in polymeric regions that are present on both major surfaces of the substrate.

For at least these reasons, Applicants respectfully request submit that a *prima facie* case of obviousness has not been established with respect to claims 85 and 107. Reconsideration and withdrawal of this rejection is, therefore, respectfully requested.

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Summary

It is respectfully submitted that pending claims 71-79, 81-90, 92-108 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted by

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July 13, 2006

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 13th day of July, 2006, at 1:40 pm (Central Time).

By: Sue DombroskeName: Sue Dombroske